IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5020 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AMC

Versus

KANSWAMI RAJU

Appearance:

1. Special Civil Application No. 5020 of 2000

MR RM CHHAYA for Petitioner No. 1

MR MM TIRMIZI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/09/2001

ORAL JUDGEMENT

1. Rule returnable today. Mr.Tirmizi waives service of rule on behalf of the respondent.

2. The petitioner-Corporation has challenged the Award passed by the Labour Court, Ahmedabad, in Reference

(LCA) No.2507 of 1995, by which the Labour Court has granted full back wages in favour of the respondent-workman for the intervening period.

3. The respondent-employee raised the aforeaid dispute on the ground that he was serving as a labourer in the Corporation and the Corporation has orally terminated the service from 7th May, 1995 and accordingly, by way of oral order, his services were terminated. He, therefore, raised the aforesaid dispute with a demand of getting reinstatement with full back wages for the intervening period. It is the say of the concerned workman that he was serving as a labourer at various places and that, he has served since 1973 upto 9.7.1995 and during the period between 4.7.1995 and 6.7.1995, even though he was reporting for duty, he was not given any work and that such termination is illegal and arbitrary.

4. On behalf of the Corporation, reply was given at Exhibit 10 and the said demand was resisted on various grounds. It is the say of the Corporation that the respondent was discharging his duties as regards cleaning the Kankaria Lake and nearby area. However, since the aforesaid work was given to the private Contractor, the respondent and such other employees were transferred to different Departments of the Corporation. Having come to know about such transfer, the concerned workman went on leave and has not resumed his duty at the transferred place. The Corporation has stated in the reply that the concerned workman, therefore, voluntarily stopped attending the duty and the Corporation had never terminated his services at all. It was, therefore, prayed that the said reference may be rejected with costs.

5. It is required to be noted that, during the pendency of the dispute, the concerned workman resumed duty and, accordingly, he was given work by the Corporation and from 11th March, 1999, he has resumed his duties. The Labour Court was concerned only with the question of back wages during the intervening period. The Labour Court came to the conclusion that in view of the oral say of the workman that his services were orally terminated with effect from 7th May, 1995 and since no enquiry was held, he was entitled to full back wages during the intervening period. The aforesaid finding is challenged by Mr.Chhaya on the ground that the said finding was given without any evidence on the record worth the name and simply because the employee has stated in the evidence that his services were orally terminated,

the Labour Court has accepted the same. Mr.Chhaya has further argued that, moment the transfer order was passed, the concerned employee voluntarily left the service. Not only that, various letters were written by the Corporation to the concerned workman to resume duty, but he refused to obey the same. One of such letters is produced at page 15 with this petition. From time to time such letters were written. Still, he has not resumed duty. It is argued by Mr.Chhaya that once the employee has left the service voluntarily, it is not a case in which the back wages were required to be given to him. From time to time, letters were written to the employee to resume duty. He submitted that the Labour Court has not considered this aspect in its true perspective and, therefore, it has committed error of law in not considering the evidence in its true sense.

6. Considering the facts of the case, it seems that the concerned workman, having come to know about the transfer order, decided not to resume his duty and even though various letters were written by the Corporation asking him to resume his duty, he did not resume his duty even therafter.

Mr.Tirmizi, however, argued that the workman has not received such letters. But, it is difficult to believe such say of the workman. As per the correspondence, which is annexed from page 15 onwards, it is clear that such letters were sent by way of registered post A.D. and, in any case, there was no reason for not to resume his duty at the transferred place. It is also not possible to accept the say of Mr.Tirmizi that even though the concerned workman was reporting for duty every day, he was not given any work by the Corporation. This say is falsified by the subsequent event that when he went for resumption of duty, ultimately, work was given to him and he was taken back in service from 11th March, 1999. The Labour Court, therefore, has passed a very casual order in a mechanical manner. It is required to be appreciated that once an employee himself failed to abide by the transfer order, and did not resume the duty, and subsequently, when the employer has taken him back in service on humanitarian ground, in such cases, the Labour Court should not be so generous and liberal in ordering back wages for the entire period. It is a case in which the employee was required to obey the transfer order and some discipline was required to be maintained. The order of the Labour Court is absolutely casual and, in detail, the evidence has not been discussed at all. It is also required to be noted that once it is found that the employee himself has voluntarily left the service and in

spite of various letters written by the petitioner, directing him to resume duty, he has thought it fit not to resume duty, it cannot be said that the Corporation has passed any order of termination against him. If there is an order terminating the service, then naturally enquiry is required to be held prior to such termination order, but when the services are not terminated, it is difficult to understand as to what type of enquiry is to be made especially when in spite of various letters, the employee thought it fit not to resume duty and has accordingly abandoned his services.

7. Under the above circumstances, the order of the Labour Court granting full back wages to the concerned employee during the intervening period is required to be set aside as the same is passed absolutely in a mechanical manner. However, considering the facts and circumstances of the case, even though, without any justification, prima facie, the employee had remained absent and not resumed his duty, still, by way of some token compensation for the intervening period, the Corporation may pay an ex gratia amount for the interim period. It is clarified that this order may not be treated as a precedent and in the facts of the case, no amount was required to be given to the concerned employee towards back wages. Under these circumstances, the order of the Labour Court is set aside. The concerned workman will not be entitled to back wages except token amount of Rs.10,000/- for the entire interim period. The said amount of Rs.10,000/- may be paid within a period of one month from today.

In view of what is stated above, the petition is accordingly partly allowed. Rule is made absolute partly with no order as to costs.

6th September, 2001 (P.B. Majmudar, J.)

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(apj)